

ACT 300

H.B. NO. 231

A Bill for an Act Relating to Tort Reform.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Findings and purpose. The legislature found in 1986 that the crisis in liability insurance required tort reform as a solution to ever-increasing liability insurance rates and in some cases, unavailability of insurance. In response to this crisis, the legislature passed Act 2 of the 1986 Special Session, which provided for among other things, rate reduction relief, rebate or credit for excessive rates, prohibited cancellation of policies, and amended several parts of the Hawaii Revised Statutes to provide for periodic payment of damages, limit the statute of limitations for suits by minors, limit noneconomic damages and damages for pain and suffering, abolish liability for negligent infliction of serious emotional distress arising solely out of damage to property, and provide for court-annexed arbitration.

The legislature further finds that the automatic repeal of parts of Act 2 on October 1, 1989 will eliminate much of the progress made to date. The innovations provided by that Act should be allowed to continue for two more years to permit a longer review period during which to evaluate these reforms.

SECTION 2. Section 31 of Act 2, First Special Session Laws of Hawaii 1986, is amended to read as follows:

“SECTION 31. This Act shall take effect upon its approval, and Sections 2 to 7, Section 17, and Section 20 shall be repealed on October 1, [1989] 1991.”

SECTION 3. SECTION 386-8.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§386-8.5]]~~ **[Immunity from] Limits of third party liability.** (a) Section 386-8 and any other law to the contrary notwithstanding, when a work injury for which compensation is payable under this chapter has been sustained, the discussion or furnishing of, or failure to discuss or furnish, or failure to enforce any safety or health provision to protect employees against work injuries, in any collective bargaining agreement or in negotiations thereon, shall not subject a labor organization representing the injured employee to any civil liability for the injury.

As used in this section, the terms:

- (1) “Labor organization” means any organization which exists and is constituted for the purposes,¹ in whole or in part, of collective bargaining or dealing with employers,¹ concerning grievances, terms, or conditions of employment, or of other mutual aid or protection and includes both private industry and public employment labor organizations.
- (2) “Safety or health provisions” includes, but is not limited to, safety or health inspections and advisory services.

(b) No construction design professional who is retained to perform professional services on a construction project or any employee of a construction design professional who is assisting or representing the construction design professional in the performance of professional services on the site of the construction project shall be liable for any injury on the construction project resulting from the employer’s failure to comply with safety standards on the construction project for which compensation is recoverable under this chapter unless the responsibility for the compliance of safety practices is specifically assumed by contract or by other conduct of the construction design professional or any employee of the construction design professional who is assisting or representing the construction design professional in the performance of professional services on the site of the construction project. The limitation of liability provided by this subsection to any construction design professional shall not apply to the negligent preparation of designs plans or specifications.”

SECTION 4. Section 386-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Construction design professional” means any person who is a professional engineer, architect, or land surveyor who is registered under chapter 464 to practice that profession in the State.”

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 13, 1989.)

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Note

1. So in original.